Based on Lord Simond's dictum, we say with confidence that the rule in *Turquand's* case does not apply here. We hasten to add that as Form 49 (D14) is a public document to which the common law doctrine of constructive notice applies, the respondent, having been put upon inquiry of its contents, but having failed to check, must be presumed to have known that at the material time, James Kow Yuen Wah was not a director of the first appellant and was, therefore, not authorised to sign P7 on the company's behalf. Accordingly, as P7 was signed by an unauthorised person on behalf of the first appellant, the latter cannot be made liable under the hire purchase agreement P7.

With regard to the second ground of appeal, we would like to say, in passing, that the "concession" of learned Counsel for the respondent in the Court below (certainly not Cik Tay) that there was insufficient evidence against the first appellant merely goes to show a weakness in the respondent's case. In practice, it is still the duty of the trial Judge to examine and evaluate the entire evidence before he can come to a conclusion that the evidence led against a defendant is so unsatisfactory or unreliable for him to hold that the plaintiff has not proved his case. In the instant case, in our view, it must have been against the background of the evidence of PW1 and those of DW1, DW2 and DW3, however unsatisfactory it was, that led the trial Sessions Court Judge to her finding, thereby disregarding even the "concession" made by the respondent's Counsel. However, since we have made our primary finding on the first ground of appeal, it would not be necessary for the determination of this appeal for us to decide on the second ground.

For reasons which we have stated above, we allow this appeal with costs here and below and set aside the judgments of the Courts below. Lastly, we order that the deposit be refunded to the first appellant.

ROSLIM BIN HARUN

v.

PUBLIC PROSECUTOR

SUPREME COURT, IPOH
TUN DATO' SERI HAJI ABDUL HAMID BIN HAJI OMAR LP,
TAN SRI DATUK EDGAR JOSEPH JR. SCJ,
DATO' MOHAMED DZAIDDIN BIN HJ ABDULLAH SCJ
[CRIMINAL APPEAL NO. 05-38-93]
2 APRIL 1994

DANGEROUS DRUGS: Charge of trafficking in cannabis - Whether it was sufficiently proved that the subject matter of the charge was cannabis within the meaning of s. 2 of the Dangerous Drugs Act 1952.

The accused was convicted of trafficking in 1.5 kilograms of cannabis in contravention of s. 39B(1)(a) of the Dangerous Drugs Act 1952 (the Act) and sentenced to death. On appeal the question that arose was whether it was proven beyond reasonable doubt that the subject matter of the charge was cannabis within the meaning of s. 2 of the Act and in this regard Counsel for the appellant relied heavily on the case of *Leong Bon Huat v. Pendakwa Raya* [1993] 3 CLJ 603.

Held:

[1] Having read and re-read the evidence of the chemist in the present case with a critical eye, the Court was completely convinced that it did not suffer from any of the infirmities referred to in *Leong Bon Huat's* case. In the circumstances the Court had no hesitation in concluding that it was sufficiently proved that the subject matter of the charge was cannabis within the meaning of s. 2 of the Act.

[Appeal dismissed. Conviction and sentence of death passed against the appellant confirmed].

[**Bahasa Malaysia** Translation of Headnote]

DADAH BERBAHAYA: Tuduhan mengedar ganja - Sama ada terbukti sepenuhnya bahawa halperkara tuduhan tersebut adalah ganja dalam lingkungan takrif s. 2 Akta Dadah Berbahaya 1952.

Tertuduh disabitkan kesalahan mengedar 1.5 kilogram ganja yang melanggar s. 39B(1)(a)

Akta Dadah Berbahaya 1952 (Akta tersebut) dan dijatuhkan hukuman mati. Apabila rayuan dibuat, persoalan yang timbul adalah sama ada terbukti di luar keraguan yang munasabah bahawa halperkara tuduhan tersebut adalah ganja dalam lingkungan takrif s. 2 Akta tersebut dan dalam hal ini Peguam perayu telah bersandarkan kepada kes *Leong Bon Huat v. Pendakwa Raya* [1993] 3 CLJ 603.

Diputuskan:
[1] Setelah membaca keterangan ahli kimia dalam kes semasa ini dengan penuh teliti, Mahkamah berpuashati sepenuhnya bahawa ia tidak mengalami sebarang kecacatan yang dirujukkan dalam kes *Leong Bon Huat*. Dalam hal ini, Mahkamah tidak ragu-ragu dalam menyimpulkan bahawa halperkara tuduhan tersebut adalah merupakan ganja dalam lingkungan takrif s. 2 Akta tersebut.

[Rayuan ditolak. Kesabitan kesalahan dan hukuman mati yang dijatuhkan ke atas perayu adalah disahkan].

Case referred to:
Leong Bon Huat v. PP [1993] 3 CLJ 603/[1993] 3 MLJ 11 ***(dist)***

Legislation referred to:
Dangerous Drugs Act 1952, ss. 2, 39B(1)(a), 39A

For the appellant - K. Kumaraendran (M.M. Athimulan a/l Muruthiah with him); M/s. Kumar Sitham & Co.
For the respondent - Abdul Gani Patail, DPP

[**Editors Note:** The High Court decision of this case was reported in [1993] 3 CLJ 505].

JUDGMENT

Edgar Joseph Jr. SCJ:
This appellant was convicted for trafficking, on his own behalf, in a dangerous drug, to wit, 1.5 kilograms of cannabis comprised in 2,700 rolls of dried plant material, in contravention of s. 39B(1)(a) of the Dangerous Drugs Act 1952, and sentenced to death, in the High Court at Taiping before Mr. Judicial Commissioner Abdul Malik bin Haji Ishak, sitting alone.

Subject to proof beyond reasonable doubt that the subject matter of the charge was cannabis within the meaning of s. 2 of the Act - a point which we shall be discussing in a moment - there was evidence, which if it was believed made out the guilt of the appellant.

There was evidence by the appellant to the contrary; his evidence being that at all material times, he was a police informer, assisting the police in collecting evidence to expose or flush out members of a drug syndicate operating in the Taiping area, including a certain Khalid. In furtherance of this purpose, on the date and at the time and place stated in the charge he had posed as a supplier in drug dealing transactions with a person he believed to be a buyer of the cannabis the subject matter of the charge, but who, unbeknown to him then, and as events turned out, was really a police officer cast in the role of an agent provocateur, and that despite this, the police had pulled a double cross on him by framing a case against him. In other words, the appellant was saying that this was a case of the would be biter being bitten or the biter bit, to quote the idiom which is the moral of Aesop's fable, "The Viper and the File".

When we interrupted Counsel for the appellant and asked him whether he could suggest any possible reason why the police should have done such a vicious thing to the appellant and, indeed, a thing which would be against the interest of the police since it might well have resulted in the drying up of other sources of information in the future, he was at a complete loss to answer our query.

In a long and careful judgment with which we could find no fault, the Judge carefully weighed the evidence adduced by the defence and arrived at the conclusion that it raised no reasonable doubt either as to the truth of the case for the prosecution or the guilt of the appellant. Such criticisms as were levelled at the judgment by Counsel for the appellant amounted to no more than that it was not as favourable to the appellant as Counsel would have liked it to have been.

We must now return to the only point which caused us some concern and this revolved around the question whether it was sufficiently proved that the subject matter of the charge was cannabis within the meaning of s. 2 of the Act. In support of his submission regarding this part of the case, Counsel relied heavily on a recent judgment of the Supreme Court in the case of *Leong Bon Huat v. PP* [1993] 3 MLJ 11. In that case, the accused had been convicted for trafficking in a dangerous drug, to wit, cannabis weighing 793.85g., contained in a bulk of dried leaves. The evidence of the chemist in that case suffered from many infirmities which are

conveniently summarised in the following passage in the judgment at p. 14 C to D and which reads as follows:

> It will be seen that he (the chemist) made no mention of the results of his physical examination; for example, he did not say that the plant material was all of the same type and physical features as that of cannabis; nor did he say what were the results of his microscopic examination. Did he notice any resi n in the plant material? If so, in what quantity was it present? Nor did he tell the Court as to what were the tests he conducted using chemical methods; for example, did he resort to the Dequenois Levine test and/or the thin layer chromatography test? If so, what were the results of those tests?

In the event, the Court concluded that the samples of the plant material upon which the chemist had carried out the chemical tests were inadequate, having regard to the total weight of the plant material and accordingly quashed the conviction and substituted a conviction for possession of cannabis under s. 39A of the Act.

We had carefully read and re-read the evidence of the chemist in the present case with a critical eye and are completely convinced that it does not suffer from any of the infirmities referred to in *Leong Bon Huat's* case, and so we had no hesitation in concluding that it was sufficiently proved that the subject matter of the charge was cannabis within the meaning of s. 2 of the Act. In these circumstances, *Leong Bon Huat's* case was readily distinguishable on the facts.

Accordingly, we felt compelled to dismiss the appeal and to confirm the conviction and sentence of death passed against the appellant.